

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10029 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

YANGNESH RAMANLAL PATEL

Versus

DIRECTOR MARKET & RURAL VILLAGE AGRICULTURAL DEPTT.

Appearance:

1. Special Civil Application No. 10029 of 2002
MR PM VYAS for Petitioner No. 1
MS REKHA H KAPADIA for Petitioner No. 1
RULE SERVED for Respondent No. 1
MR HM PARIKH for Respondent No. 2
MR ND GOHIL, AGP for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 18/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has prayed for a direction for payment of difference of arrears of salary as per the Government Circular dated 22.4.97 and has also prayed for being granted the benefits of the scheme for upgradation of the pay-scale after 9, 18 and 27 years of stagnation in the same scale.

2. The petitioner who is working in Talod Agricultural Produce Market has complained that though by letter dated 22.4.97 the Government has provided that the employees of the Market Committees will be entitled to receive the modified pay-scales with effect from 1.1.90, the petitioner is not being paid arrears of salary pursuant to such directives. The petitioner has also prayed that he be granted benefits of the scheme of upgradation of pay-scale after 9, 18 and 27 years of stagnation.

3. The petitioner has contended that though the petitioner is receiving the modified scale of pay with effect from 1.7.97, he is entitled to receive the same with retrospective effect from 1.1.90. In support of this claim, the petitioner has placed reliance on the circular of the Government dated 22.4.97. For seeking the higher pay-scale, upon stagnation for 9, 18 and 27 years service, the petitioner has not produced any circular, rule or regulation in support of his demand.

4. Respondent No.2 has filed an affidavit and has contended, inter alia, that the Committee is empowered under section 22 of the Gujarat Agricultural Produce Market Act to provide for payment to its officers and servants such salary, leave, allowance, pension, gratuity, etc. as the committee deems proper. It is stated that the Committee has amended the pay-scales of its employees with effect from 1.7.97 and has been paying the same admittedly from the said date. It is further suggested in the affidavit in reply filed by the respondent No.2 that the respondent No.2 cannot be compelled to adopt the higher pay-scales with effect from 1.1.90 ignoring its financial capabilities to do so.

5. Though in the affidavit in reply it is suggested that the petitioner having earlier filed Special Civil Application No.1670 of 2002 and having withdrawn the same, the petition is not maintainable, learned counsel for the respondent No.2 has not pressed the said point in his argument since he concedes that the earlier petition was withdrawn to permit the petitioner to make a representation which he has made but his grievances are still unresolved.

6. I have heard the learned counsel appearing for the parties and perused the material on record. Under section 22 of the Gujarat Agricultural Produce Market Act, the Market Committee is empowered to employ such officers and servants as may be necessary for the management of the Market and the Committee is further empowered to employ such servants and officers by paying such pension, contribution, gratuity or leave allowance as may be required by the conditions of service under the Government for the time being in force. Sub-section (3) of section 22 provides that subject to any rules made in this behalf, Market Committee may provide for the payment to its officers and servants such salaries, leave, allowances, pensions or gratuity as it may deem proper. Sub-section (3) of section 34-I of the said Act, inter alia, provides that the conditions of appointment and services of the officers and servants of the Committee and their pay-scales shall be such as may be determined by the regulations.

Section 59-A of the said Act empowers the Board which means the Gujarat State Agricultural Marketing Board, besides other things, to make regulations pertaining to matters of conditions of appointment and service of officers and servants of the Board under clause (b) of sub-section (3) of section 34I.

7. Thus, it can be seen that the pay-scale and other service conditions of the employee of the Committee are to be specified and regulated in exercise of the powers conferred under the said sections of the said Act.

8. The respondent No.2 has in the affidavit contended that the modified pay-scales have been adopted by the Committee with effect from 1.7.97 and not earlier. It is not in dispute that the employees of the Committee are receiving the higher pay-scales with effect from 1.7.97. In that view of the matter, the claim of the petitioner to receive the scales with retrospective effect from 1.1.90 cannot be accepted notwithstanding the suggestion of the Government to that effect by its letter dated 22.4.97. The capacity of the Committee to bear the burden to pay the higher wages cannot be ignored.

9. With respect to the petitioner's claim for upgradation of his scale after stagnation of 9, 18 and 27 years of service, as noted earlier, no evidence has been produced on record in support of such claim. In absence of any scheme applicable to the petitioner granting such upgradation of the scale, the demand cannot be accepted.

10. In the result, the petition is devoid of merits and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)